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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,074	03/22/2004	Gerhard H. Wenzel	032016-0132	1393
26371	7590	10/20/2006		
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306			EXAMINER PELHAM, JOSEPH MOORE	
			ART UNIT 3742	PAPER NUMBER

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,074

Applicant(s)

WENZEL, GERHARD H.

Examiner

Joseph M. Pelham

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 13, 14, 22-26, 34, 35, 37-39, 41, 42, 44 and 54-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 13, 14, 22-26, 34, 35, 37-39, 41, 42, 44, and 54-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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The Examiner acknowledges Applicant's submission of the amendment filed 7/12/06. Claims 1-9, 11, 13, 14, 22-26, 34, 35, 37-39, 41, 42, 44, and 54-58 are now pending. The Examiner notes that a further review of the claims and prior art has determined that new rejections should be made.

Claim Rejections - 35 USC § 103

Claims 1-9, 11, 13, 14, 39, 41, 42, 44, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6369360 in view of US Pat. 5223290 and US Pat. 3379141.

US'360 discloses, at col. 4, lines 15-37, and Fig. 1, a conveyor oven with upper lamps which attain operating temperatures almost instantaneously, and a lower independently controlled "Ceraspeed" ribbon heating element, which attains operating temperatures within a few seconds (2-3 sec. cited on the web site), and receiving tray, and user control of indexing cycle times.

The claims differ substantively from US'360 only in reciting moving the food to a stationary position in the oven for a selectable time, continuous or indexed movement, cycling between heating and standby orientations, a receiving tray, repeated starts and stops while the food is moving through the heated chamber, or a plurality of cooking programs.

However, Referring to Figs. 1-4, 6a, & 6b; and col. 2, line 23, through col. 4, line 10, col. 4, line 64, through col. 5, line 6, US'290 discloses continuous or indexed conveyor movement, and user control of stopping cycle times for an indexing oven conveyor belt. It would have been obvious to adapt the indexing conveyor of US'290 to the oven of US'360 to more precisely control the cooking process. US'290 teaches that the oven is automatically "cycled between a heating orientation... and a stand-by orientation where the chamber is not being used to heat [a] food item" by means of a sensor (3:1-10). It would have been obvious to utilize cycle from heating to standby modes to conserve energy. US'141 discloses repeated starts and stops while a conveyor moves food through the heated chamber. It would have been obvious to adapt the indexing method of US'141 to the oven of US'360 and US'290 in such uses as require stationary treatment of sequential food items on the belt and, moreover, so that more than one item can be cooked simultaneously, as required in the food service industry.

Moreover, a receiving tray and a plurality of cooking programs do not patentably distinguish the claimed invention from the prior art. It would have been obvious to use such programmable control since it was well known means to allow diverse cooking routines without completely and manually reconfiguring oven operation, and to use such a tray since it has long been conventional means to hold food cooked in a conveyor oven prior to serving. And although US'360 discloses a ribbon heater below rather than above the conveyor, as recited in claim 39, this too would have been an obvious modification determined strictly by the type of food cooked in the oven, i.e., by the differing heat requirements of the upper and lower surfaces of the food item.

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Claim 22-26, 34, 35, 37, 38, and 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'360 in view of US'290 and US'141, as applied to claims 1-9, 11, 13, 14, 39, 41, 42, 44, and 58 above, and further in view of US Pat. 6035765.

The claims differ from US'360 in view of US'290 and US'141 only in calling for an S-shaped belt path and a receiving tray with two positions. Referring to Fig. 1 and col. 3, lines 3-12, US'765 discloses a conveyor oven utilizing an S-shaped belt path. It would have been obvious to utilize a S-shaped belt path since US'765 shows such to be conventional means to improve belt control. Further, a receiving tray with two positions has long been conventional means to receive and hold food cooked in a conveyor oven prior to serving; and a vertical position is conventionally utilized to either occupy less space when the oven is not used, or to join the conveyor to subsequent food preparation devices

Response to Arguments


Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/10/06


JOSEPH PELHAM
PRIMARY EXAMINER